

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5644 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JETPUR NAGARPALIKA

Versus

GOBAR KARSAN & ORS.

Appearance:

MR JR NANAVATI for Petitioner
MR HL JANI for Respondents No. 4, 6
MR A. HAMEED KURESHI for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

C.A.V. JUDGEMENT

The petitioner has challenged by this writ petition, the order passed by the Gujarat Revenue Tribunal, Ahmedabad, Camp at Rajkot dated 18-9-1984 allowing the application filed by the respondent no.5 to join him as a party to the revision application of the appeal of the respondents no.1 to 3.

The facts, in brief, of the case are that the respondent no.4, City Survey Officer, Jetpur, under its order dated 11-9-1970 held the petitioner to be the lessee of the land in Jetpur city, Survey Tikka No.61, Chalta No.2. The said land was given on lease to the Jetpur Municipality as it comes out from the order of the City Survey Officer, Jetpur for Compost Khatar. The period of lease was of ten years. Aggrieved of the aforesaid order of the City Survey Officer, the respondents no.1 to 3 preferred an appeal before the Deputy Collector, Gondal being Appeal No.24 of 1980. This appeal was partly allowed by the appellate authority vide order dated 11-9-1970 and the matter was remanded to the Mamlatdar for inquiry under sec.37(2) of the Bombay Land Revenue Code. The respondents no.1 to 3 were not satisfied by the aforesaid order of remand made by the appellate authority and preferred further appeal before the District Collector, Rajkot. Simultaneously, the petitioner also filed an appeal against the order of the Deputy Collector before the District Collector, Rajkot. The appeals of respondents no.1 to 3 and the petitioner were registered as Appeal No.137/81 and 145/81 respectively. The District Collector, Rajkot decided both the appeals on 19th January, 1982. The appeal filed by the respondents no.1 to 3 was dismissed whereas the appeal filed by the petitioner was allowed and the order made in favour of the petitioner by the City Survey Officer was restored. The orders made by the District Collector, Rajkot in the appeals of the petitioner and respondents no.1 to 3 were challenged by the respondents no.1 to 3 before the Gujarat Revenue Tribunal by filing appeals No.37-38/82. The respondent no.5 who was not figured anywhere in the proceedings, reference of which has been given above, has filed an application in Appeal no.37-38/82 and prayer has been made therein that he may be impleaded as party to the proceedings and be afforded an opportunity of hearing. His application was opposed by the petitioner by filing detailed reply to the Special Civil Application. The Tribunal has considered the application of respondent no.5 and under its order dated 18th September, 1984, allowed the same. Hence, this Special Civil Application.

The counsel for the petitioner contended that the respondent no.5 was neither necessary nor a proper party to the appeal filed by the respondents no.1 to 3 before the Gujarat Revenue Tribunal, and as such, the Tribunal has committed serious error of jurisdiction in allowing his application and ordered for his impleadment therein. It has next been contended that it was a dispute between the petitioner on one hand and respondents no.1 to 3 on

other and they were litigating. Whatever right the respondent no.5 has in the land in dispute or in part thereof then he may have his own remedy other than to make request for impleading him in the appeal. The counsel for the petitioner further contended that by impleadment of respondent no.5 in the appeal, the Tribunal has to decide the lis inter-se of the two respondents which normally should not have been. The respondent no.5 has his own remedy available for the adjudication, determination of his right in the land or the part thereof elsewhere and not by filing an application in the Tribunal.

On the other hand, the counsel for the respondent no.5 contended that the respondent no.5 was considered necessary party to the appeal by the Tribunal, and as such, this court may not interfere with the order.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. When asked by the court, the counsel for the respondent no.5 fairly conceded that in support of his claim, the respondent no.5 has not filed any documentary evidence alongwith the application filed by him before the Tribunal for his impleadment in the appeal of respondents no.1 to 3. The respondent no.5 in his application has contested the right, title or interest or ownership in the land in question of both the petitioner and the respondents no.1 to 3. The respondent no.5 claimed himself to be the owner of the land as well as in occupation thereof. The substance of challenge of the respondent no.5 is to the order of the City Survey Officer wherein the petitioner has been held to be a lessee of the land in dispute. The lis was in between the petitioner on one hand and the respondents no.1 to 3. The respondent no.5 has not put any claim on the land before the City Survey Officer. If he has some claim of his ownership in the land then he should have approached to the appropriate authority or he should have taken his own legal remedy. From the application, it further transpires that the claim of the nature which has been made by the respondent no.5 therein is based on many facts which may not be admitted by the petitioner and for which the proper forum and the course would have been to file the civil suit or revenue suit, as the case may be, the remedy available to him. In the appeal, where the petitioner and respondents no.1 to 3 are contesting for their rights, such a disputed question of fact cannot be allowed to be agitated nor the appeal court may be a form to decide the claim of the respondent no.5 over the land in dispute qua the petitioner or the respondents no.1 to

I find sufficient merits in the contention of the counsel for the petitioner that the respondent no.5 is neither necessary nor a proper party to the proceeding. Whatever decision given inter-se of the petitioner and the respondents no.1 to 3 will not be binding on respondent no.5. The appellate authority will decide regarding the correctness of the entry made in the City Land Record by the City Land Record Officer and that decision will be only binding upon the petitioner and the respondents no. 1 to 3. That was the only limited controversy before the Tribunal, but now in case the respondent no.5 is allowed to implead then it will convert into a civil suit or revenue suit for the declaration and determination of the rights of the parties irrespective of the fact, who wins in the appeal i.e. the petitioner or the respondents no.1 to 3. If the respondent no.5 considers that there is any interference in his right of ownership or the occupation over the land then recourse should have been taken to the remedy elsewhere other than filing of the application in the appeal. The counsel for the respondent no.5 has urged that it will avoid multiplicity of proceedings, but I do not find any substance in this contention. It is true that one of the relevant consideration to be kept in mind while deciding the application filed by the party for his impleadment in the suit under Order 1, Rule 10, C.P.C. is that to avoid multiplicity of proceedings, but the claim which has been made by the respondent no.5 in the application of ownership or possession in the land is of such a nature which cannot be decided without having full-fledged trial of the issue. The petitioner is disputing the right of the respondent no.5 and the course which has been adopted by the respondent no.5 in such case is not amenable to him.

Taking into consideration the totality of the facts of this case, the Tribunal has committed serious error and illegality in allowing the application of respondent no.5.

In the result, this Special Civil Application succeeds and the same is allowed. The order of the Tribunal dated 18-9-1984 passed in Appeal No.TEN/A.R./38/82 allowing the application of respondent no.5 for his impleadment as party in the said appeal is quashed and set aside. Rule is made absolute accordingly.

zgs / -